

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

PATRICK GUILLORY,

Plaintiff,

v.

**9:12-CV-1771
(FJS/DEP)**

**MAUREEN BOLL, Deputy Commissioner and
Counsel, Department of Corrections and
Community Supervision; and B. JOHNSTON,
Lieutenant, Bare Hill Correctional Facility,**

Defendants.

APPEARANCES

OF COUNSEL

PATRICK GUILLORY

09-B-0714

Wyoming Correctional Facility

P.O. Box 501

Attica, New York 14011

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendants

DOUGLAS J. GOGLIA, AAG

SCULLIN, Senior Judge

ORDER

Plaintiff commenced this § 1983 action *pro se* on December 3, 2012. *See* Dkt. No. 1. In a Memorandum-Decision and Order dated February 5, 2013, this Court granted Plaintiff's motion to proceed *in forma pauperis* and severed and transferred Plaintiff's claims against Defendant Washburn to the United States District Court for the Western District of New York. *See* Dkt.

No. 7. On February 21, 2013, the remaining two Defendants in this action, Defendant Boll and Defendant Johnston, filed a motion to dismiss. *See* Dkt. No. 12. Plaintiff filed papers in opposition to that motion on March 8, 2013. *See* Dkt. No. 20. Shortly thereafter, Plaintiff filed a motion for sanctions against Defendants' counsel, *see* Dkt. No. 23, and a motion for summary judgment, *see* Dkt. No. 24. Defendants filed papers in opposition to both of those motions. *See* Dkt. Nos. 29, 31. Plaintiff filed papers in further support of both of his motions. *See* Dkt. Nos. 32-34.

In a very thorough Report and Recommendation dated August 29, 2013, Magistrate Judge Peebles recommended that this Court deny Defendants' motion to dismiss Plaintiff's complaint, deny Plaintiff's motion for sanctions against Defendants' counsel, and deny Plaintiff's motion for summary judgment without prejudice to renewal following the completion of discovery in this action. *See* Dkt. No. 52 at 31. Plaintiff filed objections to those recommendations. *See* Dkt. Nos. 53-54.

When a party makes specific objections to portions of a magistrate judge's report and recommendation, the court conducts a *de novo* review of those recommendations. *See Trombley v. O'Neill*, No. 8:11-CV-0569, 2011 WL 5881781, *2 (N.D.N.Y. Nov. 23, 2011) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). Where a party makes no objection or makes only conclusory or general objections, however, the court reviews the report and recommendation for "clear error" only. *See Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 1794741, *1 (N.D.N.Y. June 23, 2009) (quotation omitted). After conducting the appropriate review, a district court may decide to accept, reject or modify those recommendations. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)).

In light of Plaintiff's filing of objections and his *pro se* status, the Court has conducted a *de novo* review of Magistrate Judge Peebles' Report and Recommendation. Having completed that review, the Court hereby

ORDERS that Magistrate Judge Peebles' August 29, 2013 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss Plaintiff's complaint for failure to state a claim is **DENIED**; and the Court further

ORDERS that Plaintiff's motion for sanctions against Defendants' counsel is **DENIED**; and the Court further

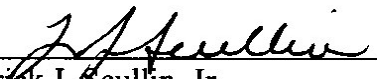
ORDERS that Plaintiff's motion for summary judgment is **DENIED without prejudice** to renewal following the completion of discovery in this matter; and the Court further

ORDERS that this matter is referred to Magistrate Judge Peebles for all further pretrial matters; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties.

IT IS SO ORDERED.

Dated: September 19, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge